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No. 03-1214

IN THE
Supreme Court of the United States

ALLSTATE CORPORATION, et al.,
Petitioners,

v.

JOSE C. DeHOYOS, et al.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

AMICUS BRIEF OF AMERICAN INSURANCE ASSOCIATION, NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES, AND PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA IN SUPPORT OF PETITIONERS

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INTERESTS OF *AMICI CURIAE*

Amici, the principal trade associations for the property and casualty insurance industry in the United States, have a major stake in this case. The court below held that a putative national class has the right to rely on a federal law that is not specifically related to insurance to challenge the actuarially sound use of credit information for insurance ratemaking purposes. Many of *Amici*'s members are, or are considering, using credit data for these purposes.

Under the decision below, Respondents will be permitted to pursue their claims under the Fair Housing Act ("FHA"), 42 U.S.C. § 3604, based on, *inter alia*, the so-called "disparate impact" standard. *Amici* respectfully submit this brief to support the position that the use of valid, facially neutral credit information in the underwriting and pricing of insurance – a practice that is expressly authorized by federal and state law for use in the business of insurance – cannot, as a matter of law, give rise to liability predicated on a standard of disparate impact.[1]

SUMMARY OF ARGUMENT

This Court held in *Humana Inc. v. Forsyth*, 525 U.S. 299 (1999), that if a federal law does not specifically relate to the business of insurance, the McCarran-Ferguson Act ("MFA"), 15 U.S.C. § 1012(b), permits the application of that law to insurance if, and only if: (1) the federal law "does not directly conflict with state regulation," (2) application of the law "would not frustrate any declared state policy," and

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[1] This brief was not authored, in whole or in part, by counsel for either party, and no person or entity other than the *amici curiae*, their members, and their counsel contributed monetarily to the preparation or submission of the brief. The parties consented to the filing of the brief and copies of their letters of consent have been lodged with the Clerk of the Court.

(3) application of the law would not "interfere with a State's administrative regime." 525 U.S. at 310. In this case, a majority of the court below misconstrued the relationship between the MFA and the FHA, a statute that indisputably does not specifically relate to the business of insurance. The crux of the majority's error was in apparently assuming that the FHA could provide the basis for the Respondents' alleged causes of action predicated on a purportedly discriminatory "disparate impact" of race-neutral underwriting criteria.

The implications of this assumption for State regulation of insurance, expressly reserved to the States by the MFA, merit this Court's immediate review. The disparate impact theory, as applied by the courts under certain civil rights laws, is wholly inappropriate in the context of State regulation of insurance. Each and every State prohibits insurers from intentionally discriminating in underwriting and pricing based on race or national origin. At the same time, State insurance law expressly requires insurers to base their underwriting and ratemaking on factors that are predictive of risk of loss. Under State insurance law, "unfair discrimination" includes *both* (1) charging rates that are not based on sound actuarial data reflecting policyholders' anticipated risks of loss *and* (2) intentionally basing rates on the race, creed, color, ethnicity, or national origin of a policyholder. *See, e.g.*, Tex. Ins. Code art. 21.21-6, §§ 3-4.

In compliance with State law, *Amici*'s members base their underwriting and ratemaking decisions on factors that never include consideration of race, creed, color, ethnicity, or national origin. Indeed, insurers do not request any information about such factors. Rather, insurers rely on race-neutral factors such as, in the homeowners insurance context specifically, claims history of applicant, construction material(s), loss history of property, roofing material, and, as relevant here, applicant credit history.

Based on more than a decade of loss experience, the insurance industry has found that there is a direct relationship between financial stability and risk. *See* NATIONAL ASS'N OF INSURANCE COMMISSIONERS, REPORT ON CREDIT REPORTS AND INSURANCE UNDERWRITING 4 (1997). This relationship has been affirmed by numerous studies, which have concluded that the use of credit information is an effective and useful risk-predictive tool. Recognizing the risk-predictive value of credit data, a large majority of the States have enacted legislation authorizing, in some cases with carefully designed limitations, the use of such data for underwriting and ratemaking purposes. A majority of the court below, however, ignored these State laws in suggesting that Petitioner could, without any intent to discriminate on the basis of race, be held liable for racial discrimination under the FHA because it used credit data for risk-assessment purposes. This majority's failure to recognize the significance of State law in relation to the application of a federal statute not "specifically relate[d] to the business of insurance" was in direct contravention of the MFA. 15 U.S.C. § 1012(b).

Credit information is only one risk-predictive factor that, under the disparate impact theory, could lead to judicial contravention of the MFA. Any number of actuarially sound risk-predictive factors, including dwelling characteristics or claims history, could conceivably correlate statistically with race (or another protected classification) in certain circumstances. But that statistical correlation cannot support an inference that a facially neutral, actuarially justified underwriting or pricing decision reflects any consideration of race, ethnicity, etc. The disparate impact test is thus fundamentally ill-suited to analyzing claims of racial discrimination in the insurance context.

Forcing insurers to defend against charges of disparate impact would subject them to potentially frequent, unwarranted litigation, including possible national class

actions such as this. More significantly, a judicial determination regarding the validity of an insurer's actuarial defense to disparate impact charges would necessarily entangle the courts in issues that are by law exclusively within the province of individual State insurance regulators. Federal judicial involvement based on federal law would necessarily displace State insurance regulators vested with exclusive authority (subject to State judicial review) to determine the propriety of insurance rates, thereby frustrating a declared State policy. By depriving those regulators of the ability to exercise their quasi-legislative discretion granted by State law, application of federal law would interfere with every State's insurance regime. Under this Court's ruling in *Humana*, any such injection of judicial authority is impermissible under the MFA.

ARGUMENT

I. THIS CASE PRESENTS AN IMPORTANT ISSUE OF FEDERALISM, AND ITS REVIEW WILL ALLOW THE COURT TO CLARIFY ITS DECISION IN *HUMANA V. FORSYTH*.

When Congress enacted the MFA in 1945, it expressly declared that "the continued regulation and taxation by the several States of the business of insurance is in the public interest." 15 U.S.C. § 1011. Section 2(b) of the MFA provides, in pertinent part, that "[n]o Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance . . . unless such Act specifically relates to the business of insurance[.]" 15 U.S.C. § 1012(b). Prior to and since the enactment of the MFA, the substantive regulation of

property-casualty insurance has remained the exclusive province of the States and their administrative agencies.[2]

In *Humana*, this Court held that if a federal law does not specifically relate to the business of insurance, the MFA will allow the application of that law to insurance if, and only if: (1) the federal law "does not directly conflict with state regulation," (2) application of the law "would not frustrate any declared state policy," and (3) application of the law would not "interfere with a State's administrative regime." 525 U.S. at 310. It is undisputed that the FHA does not specifically relate to the business of insurance.[3] Nevertheless, in the proceedings below, a majority of the Fifth Circuit panel apparently assumed the FHA could possibly provide the basis for the Respondents' alleged causes of action predicated on a purportedly discriminatory "disparate impact" of race-neutral underwriting criteria.[4] That assumption is fundamentally at odds with State insurance regulation, which, as discussed further below, requires insurers to underwrite and rate insurance policies based on race-neutral factors predictive of risk. Because, as this Court noted in *City of Los Angeles Dep't of Water and Power v. Manhart*, 435 U.S. 702, 710 n.20 (1978), "[e]ven a completely neutral practice will

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[2] This is in marked contrast to the other areas of the financial services industries, *viz.*, banking and securities, which are regulated extensively by the federal government and its agencies. There is, of course, no general insurance regulatory authority at the federal level.

[3] *See Nationwide Mut. Ins. Co. v. Cisneros*, 52 F.3d 1351, 1360-61 (6th Cir. 1995); *NAACP v. Am. Family Mut. Ins. Co.*, 978 F.2d 287, 295 (7th Cir. 1992).

[4] This Court has not specifically ruled regarding whether the disparate impact standard applies to claims brought under the FHA. *See Town of Huntington, N.Y. v. Huntington Branch, NAACP*, 488 U.S. 15, 18 (1988) (per curiam) (expressly declining to condone the use of disparate impact theory under the FHA). This case presents the opportunity for the Court to settle this question in the negative, specifically with respect to insurance.

inevitably have *some* disproportionate impact on one group or another" (emphasis in original), the application of the disparate impact test to insurance could effectively open up the entire State-regulated insurance-ratemaking process to federal judicial intervention, in violation of the fundamental purposes of the MFA.

If this Court allows the Fifth Circuit's decision to stand, federal judges in the Fifth Circuit, and possibly throughout the nation, could find themselves in the inappropriate position of a "super actuary" in a plethora of cases alleging an unfair "disparate impact" in the pricing of insurance products. Opening the courthouse doors to FHA claims against insurers based on the disparate impact theory would invite litigants, even absent any basis for alleging an intentional violation, to initiate lawsuits challenging the use of virtually any facially neutral criterion for underwriting or pricing of homeowners insurance. Faced with such claims, the federal courts will be forced to engage in a quasi-legislative task of determining the appropriate underwriting and pricing of homeowner's insurance policies. This untenable result is flatly at odds with the MFA.

For the foregoing reasons, this case presents an extremely important issue of federalism upon which this Court should rule. *See Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991) ("[I]f Congress intends to alter the 'usual constitutional balance between the States and the Federal Government,' it must make its intention to do so 'unmistakably clear in the language of the statute.'") (quoting *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 242 (1985)).

II. USE OF THE DISPARATE IMPACT STANDARD IS WHOLLY INAPPROPRIATE IN THE CONTEXT OF INSURANCE.[5]

A. State Insurance Laws Require the Use of Actuarially Sound, Risk-Predictive Underwriting Criteria.

State insurance laws throughout the nation prohibit insurers from charging rates that are "excessive, inadequate, unreasonable, or unfairly discriminatory."[6] Under State insurance law, a rate is generally not deemed "unfairly

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[5] "Underwriting" is the process whereby an insurance company gathers information and decides whether or not it will insure the applicant. "Rating" or "ratemaking" is the process that determines how much a policyholder pays for the insurance. For economy, we at times use the term "underwriting" to refer to both underwriting and ratemaking unless a distinction is important in the context.

[6] *See* Tex. Ins. Code arts. 5.142, 5.13-2; *see also* Ala. Code § 27-13-65; Alaska Stat. § 21.39.030; Ariz. Rev. Stat. § 20-356; Ark. Code Ann. § 23-67-208; Cal. Ins. Code § 1861.05; Colo. Rev. Stat. Ann. § 10-4-403; Conn. Gen. Stat. Ann. § 38a-686; Del. Code Ann. tit. 18, § 2503; D.C. Code Ann. § 31-3508(e); Fla. Stat. Ann. § 627.062; Ga. Code Ann. § 33-9-4; Haw. Rev. Stat. Ann. § 431:14-103; Idaho Code § 41-1405; Ind. Code Ann. § 27-1-22-3; Iowa Code Ann. § 515F.4; Kan. Stat. Ann. § 40-953; Ky. Rev. Stat. Ann. § 304.13-031; La. Rev. Stat. Ann. § 22:1404; Me. Rev. Stat. Ann. tit. 24-A, § 2303; Md. Code Ann., Ins. § 11-205; Mass. Gen. Laws Ann. ch. 175A, § 5; Mich. Comp. Laws Ann. § 500.2109; Minn. Stat. Ann. § 70A.04; Miss. Code Ann. § 83-2-3; Mo. Ann. Stat. § 379.318; Mont. Code Ann. § 33-16-201; Neb. Rev. Stat. § 44-7510; Nev. § 686B.050; N.H. Rev. Stat. Ann. § 414:3; N.J. Stat. Ann. § 17:29AA-10; N.M. Stat. Ann. § 59A-17-6; N.Y. Ins. Law § 2303; N.C. Gen. Stat. § 58-40-20; N.D. Cent. Code § 26.1-25-03; Ohio Rev. Code Ann. § 3937.02; Okla. Stat. Ann. tit. 36, § 902; Or. Rev. Stat. § 737.310; 40 Pa. Cons. Stat. Ann. § 1183; R.I. Gen. Laws § 27-44-5; S.C. Code Ann. § 38-73-330; S.D. Codified Laws § 58-24-5; Tenn. Code Ann. § 56-5-303; Utah Code Ann. § 31A-19a-201; Vt. Stat. Ann. tit. 8, § 4685; Va. Code Ann. § 38.2-1904; Wash. Rev. Code Ann. § 48.19.020; W. Va. Code § 33-20-3; Wis. Stat. Ann. § 625.11; Wyo. Stat. Ann. § 26-14-105.

discriminatory" if it (1) is based on sound actuarial principles or bears a reasonable relationship to the expected loss and expense experience among risk, *and* (2) is not intentionally based on race, color, religion, national origin, or another protected classification.[7]

To comply with State insurance laws regarding actuarially sound risk classification, insurers must seek to determine rates that most accurately measure loss potential. *See Gen. Ins. Co. of Am. v. Bowen*, 196 N.E. 774 (Ohio 1935) (insurance policies that resulted "'in a different annual rate for the same risk or similar risks in the same class'" were in violation of basic insurance laws) (internal citation omitted); 5 LEE RUSS & THOMAS SEGALIA, COUCH ON INSURANCE § 69:32 (3d ed. 2003) (State laws "declare that all deviations shall be uniform as to risks and classes"). Actuarial science accomplishes this task by segmenting groups of individuals expected to have similar risks of loss.[8] By grouping a policyholder with others with a similar risk profile, based on the greatest number of identifiable risk-related factors available, insurers are able to offer the most fair price for particular insurance products and to offer coverage to people they might have otherwise declined. Common homeowners insurance risk-predictive factors include claim history of applicant, construction material(s), distance from fire station, existence of fire suppression devices, home-based business presence and type, lead paint potential (for homes constructed

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[7] *See, e.g.*, Tex. Ins. Code art. 21.21-6 §§ 3, 4; Haw. Rev. Stat. Ann. § 431:14-103(a); Iowa Code Ann. § 515F.4(2)&(3); Me. Rev. Stat. Ann. tit. 24-A, § 2303(1); Miss. Code Ann. § 83-2-3.

[8] Casualty and Actuarial Society, Statement of Principles Regarding Property and Casualty insurance Ratemaking, at Principle 4 (adopted 1988), *available at* http://www.casact.org/standards/princip/sppcrate.pdf ("A rate is reasonable and not excessive, inadequate or unfairly discriminatory if it is an actuarially sound estimate of the expected value of all future costs associated with an individual risk transfer.").

pre-1978), loss history of property, roofing material, security system, and, as relevant here, credit-based insurance scores. Insurers do *not* underwrite homeowners insurance based on classifications typically deemed protected under the civil rights laws, including race or ethnicity. Indeed, homeowners insurers do not even request information regarding such classifications.[9]

However, any number of well-accepted, facially neutral insurance rating factors, including, for example, property loss history or dwelling proximity to firehouse, could conceivably correlate statistically with demographic groupings in certain circumstances. It is this potential incidence of correlation that renders the disparate impact test inappropriate in the context of insurance. As the Seventh Circuit queried in *NAACP v. American Family Mutual Insurance Co.*, 978 F.2d 287, 291 (7th Cir. 1992), how could you know whether "a higher rate per $1,000 of coverage for fire insurance in an inner city neighborhood [is] attributable to risks of arson or to racial animus?" Yet, " '[i]f insurance premiums are to remain at reasonable levels for most householders, some insurers must be permitted to reject risks which are perceived to be excessively high, while charging higher premiums on some risks than upon others.' . . . [C]lassification of risks is important to insurance, and assigning higher rates to greater risks differs from assigning rates by race." *NAACP*, 978 F.2d at 298 (quoting *Mackey v. Nationwide Ins. Cos.*, 724 F.2d 419, 423 (4th Cir. 1984)). Simply put, "[r]isk discrimination is not race discrimination." *Id.* at 290.

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[9] This is in contrast to banking, where lenders are required to request data on racial classifications under the Home Mortgage Disclosure Act, 12 U.S.C. § 2801 *et seq.*, and the Federal Reserve's Regulation C promulgated thereunder, 12 C.F.R. § 203 *et seq.*

The disparate impact theory is thus inappropriate in the context of the business of insurance. Application of the theory in this context would necessarily lead to perverse consequences in a variety of circumstances. Dwelling distance from firehouse, for example, might correlate statistically with race of homeowner in some circumstances, and yet plainly could affect risk of loss.[10] Likewise, while insurers are authorized under State laws to consider smoking as a factor when underwriting certain forms of insurance, *see, e.g., Mut. Benefit Life Ins. Co. v. JMR Elec. Corp.*, 848 F.2d 30, 31 (2d Cir. 1988) (smoker's misrepresentation regarding his history of smoking was material and thus insurer could rescind insurance policy); 6 COUCH ON INSURANCE § 88:23 (3d ed. 2003) ("In light of the many modern reports of the adverse health consequences that may flow from direct use of tobacco, . . . many insurers offer different rates to smokers and nonsmokers."), the incidence of smoking is not uniform across different racial or ethnic groups, for example, and thus has a disparate impact on such groups. *See, e.g.*, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, A REPORT OF THE SURGEON GENERAL, TOBACCO USE AMONG U.S. RACIAL/ETHNIC MINORITY GROUPS 88 (1998) (showing prevalence of cigarette smoking among adults who are

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[10] Notably, the States may always, explicitly by legislation, restrict underwriting practices – even ones that are actuarially justified – that they find objectionable on public policy grounds. Aside from prohibitions on considering factors such as race, color, religion, etc., States have periodically also restricted the use of other underwriting criteria that may bear on risk but are deemed contrary to public policy. For example, at least two States prohibit the use of age of home to some extent as a factor in underwriting. *See, e.g.*, 28 Tex. Admin. Code § 21.1006 ("An insurer may not decline to write residential property insurance based on the age of the property sought to be insured."); Conn. Agencies Regs. § 38a-824-3 (it is "unfair discrimination" to refuse to underwrite or cancel homeowners insurance "solely because of the age of structure"). But no State statute prohibits the use of otherwise-permissible rating factors based on a "disparate impact" approach.

African Americans (26.5%), American Indians/Alaska Natives (36.0%), Asian American/Pacific Islanders (14.2%), Hispanics (18%), and Whites (26.4%)).[11] Moreover, there is no reason to believe that race- or gender-neutral underwriting criteria will generally inure to the benefit of Caucasians or men, as opposed to historically disadvantaged or protected classes. *See id.* (showing that 28.1% of White males were smokers (and thus subject to higher insurance rates), while only 14.6% of Hispanic females and 5.4% of Asian American/Pacific Islander females were smokers). Smoking, or a dwelling's distance from a firehouse, are only two examples of the numerous insurance rating factors that are neutral with respect to race, ethnicity, etc., but might conceivably correlate statistically with race or another FHA-protected classification.

With respect to the underwriting practice at issue in this case, the insurance industry has found that there is a "direct relationship between financial stability and risk." NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, REPORT ON CREDIT REPORTS AND INSURANCE UNDERWRITING 4 (1997). This relationship has been affirmed by numerous studies, which have concluded that the use of credit information as a risk factor is an effective and useful loss-predicting tool.[12] Thus, an overwhelming majority of States

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[11] *Available at* http://www.cdc.gov/tobacco/sgr/sgr_1998/sgr-min-pdf/sgr-all.pdf.

[12] *See, e.g.*, Va. State Corp. Comm'n Bureau of Ins., *Use of Credit Reports in Underwriting* at 2 (1999) ("In every case where insurers have proposed to use credit scoring as a rating factor and have been able to provide sufficient data to the Bureau's actuaries, the use of credit scoring has been found to be statistically correlated to losses."); University of Texas McCombs School of Business, Bureau of Business Research, *A Statistical Analysis of the Relationship Between Credit History and Insurance Losses* at 13 (March 2003) (finding a highly significant relationship between credit history and insurance losses, and asserting that "[t]he lower a named insured's credit score, the higher the probability that

(footnote continued on next page)

permit insurers' use of credit data for this purpose, and at least thirty-nine States have enacted legislation specifically addressing the proper role of credit information in the insurance risk-assessment process.[13] The States are continuing to develop, consistent with their overall objective that their citizens have available to them affordable insurance

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(footnote continued from previous page)

the policyholder will incur losses on an automobile insurance policy, and the higher the expected loss on the policy."); EPIC Actuaries, Michael J. Miller and Richard A. Smith, *The Relationship of Credit-Based Insurance Scores to Private Passenger Automobile Insurance Loss Propensity* (June 2003) (finding not only a correlation between credit-based insurance scores and propensity for loss, but also that insurance scores are consistently among the most important variables used by insurers); James E. Monaghan, *The Impact of Personal Credit History on Loss Performance in Personal Lines*, Actuarial Society Forum (Winter 2000) (finding clear evidence of a strong correlation between credit history and future loss performance); Tillinghast-Towers Perrin, Study on Insurance Bureau Scores vs. Loss Ratio Relativities for Fair, Isaac & Co. (Dec. 10, 1996) (finding very strong evidence of correlation between Insurance Bureau Scores based on consumer credit information and loss ratio relativities); American Academy of Actuaries, *The Use of Credit History for Personal Lines of Insurance: Report to the National Association of Insurance Commissioners* at 3 (Nov. 2002) (finding that "credit history can be used effectively to differentiate between groups of policyholders and therefore it is an effective tool.").

[13] *See* NATIONAL ASS'N OF INSURANCE COMMISSIONERS, USE OF CREDIT REPORTS/SCORING IN UNDERWRITING (Nov. 2003) (chart attached as Appendix hereto). A significant number of these States have adopted legislation based on the National Conference of Insurance Legislators' ("NCOIL") Model Act Regarding Use of Credit Information in Personal Insurance. *See* National Conference of Insurance Legislators, NCOILetter, *NCOIL Clarifies Insurance Scoring 'Sole Use' Provisions* (January 2004), *available at* http://www.ncoil.org (reporting that sixteen States have adopted laws based on the NCOIL model); *see also, e.g.*, Fla. Stat. Ann. § 626.9741; Ga. Code Ann. § 33-24-90, *et seq.*; Ind. Code Ann. § 27-2-21-1, *et seq.*; La. Rev. Stat. Ann. § 22:1481, *et seq.*; Neb. Rev. Stat. § 44-7701, *et seq.*; Okla. Stat. Ann. tit. 36, § 950, *et seq.*

coverage,[14] particular rules regarding insurers' use of credit scores. The decision below, however, may effectively preempt State insurance legislators and regulators from going through their own technical analyses of credit data as an aid to underwriting and ratemaking, including by weighing consumer and industry input on the issue through their individual legislative and regulatory deliberative processes. Such a result is directly at odds with the MFA, in which Congress, recognizing the individual policy interests of the States with respect to the development and enforcement of their particular insurance regimes, expressly prohibited the courts from interfering with State insurance regulation by application of federal law, absent a clear Congressional directive to the contrary.

B. A Proper Application of *Humana* Shows That the MFA Bars the Use of the Disparate Impact Test Under the FHA.

In light of the foregoing background on State insurance laws, it is apparent that the majority below misapplied this Court's holding in *Humana*. Adjudication of Respondents' disparate impact claims would necessarily "conflict" with a State law, "frustrate" declared State policy, *and* "interfere" with State administrative regimes. *See* 525 U.S. at 310; *see also LaBarre v. Credit Acceptance Corp.*, 175 F.3d 640, 643 (8th Cir. 1999) (upholding decision to bar claims under the MFA where federal law would

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[14] *See, e.g.*, Actuarial Standards Board, *Actuarial Standard of Practice No. 12, Concerning Risk Classification, available at* http://www.actuarialstandardsboard.org/pdf/asops/asop012_014.pdf (Oct. 12, 1989) (noting that "[i]n a voluntary market system, risk classification is vital to ensure the equity and financial soundness of the system" and that the ability to "permit economic incentives to operate and thereby encourage widespread availability of coverage" is a primary purpose of risk classification).

frustrate, "perhaps even supplant [the State's] carefully developed scheme of regulation") (quoting *Doe v. Norwest Bank Minn.*, 107 F.3d 1297, 1308 (8th Cir. 1997)).

First, unlike the "administrative scheme" complained of in *Humana*, which was alleged to be unlawful under both Nevada and federal law, the Respondents in this case allege violations of federal law only. Respondents here could not allege a violation of State law because there clearly is no violation. Indeed, subsequent to the filing of this suit, Texas enacted a law that expressly permits credit scoring in insurance underwriting under certain conditions. *See* Pet. at 20. But, even prior to such enactment, Texas and every other State required insurers to base their underwriting and ratemaking practices on risk discrimination supported by sound actuarial data. *See, e.g.*, Tex. Ins. Code art. 21.21-6 § 4, discussed *supra*. Thus here, unlike in *Humana*, the federal law at issue, *i.e.*, the FHA, under the disparate impact theory, would actually "proscribe conduct that the State's laws governing insurance permit." 525 U.S. at 303. And, unlike the conduct at issue in *Humana*, where "[t]he acts the policy beneficiaries identif[ied] as unlawful under RICO [were] also unlawful under Nevada law," there is no such symmetry here. *See id.* at 308. Accordingly, unlike the laws at issue in *Humana*, the federal and state laws here *do* directly conflict, and the MFA therefore plainly precludes the application of the FHA in this case. *See id.*

Second, application of the disparate impact test to insurance underwriting and ratemaking would undoubtedly "frustrate" the declared policy of essentially every State in the Union. As set forth above, the policy of State insurance laws is to avoid "unfair discrimination" (*vis-à-vis* equal risks) and the "adverse selection" that will inevitably result from policies that fail to adequately measure and compensate for

differences in known risks.[15] Under *Humana*, "[w]hen federal law is applied *in aid or enhancement* of state regulation," the MFA will not bar action under the federal statute. *Id.* at 303 (emphasis added). In this case, the twin State goals of "fair discrimination" and avoidance of "adverse selection" would be neither aided nor enhanced by application of the disparate impact standard – indeed, they would manifestly be adversely affected. Accordingly, application of that standard under the FHA would plainly frustrate the States' declared policies embedded in basic insurance laws.

Finally, the application of the disparate impact test by federal judges under the FHA would wreak havoc on the States' insurance regulatory regimes. Under the disparate impact standard, once a plaintiff has made out a *prima facie* case of disparate impact, the defendant must bear the burden of producing evidence that its challenged practice is based on "legitimate business reasons" or "business necessity." *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 998 (1988). Even if that burden can be met, the plaintiff nevertheless may prevail if he can "show that other tests or selection devices, without a similarly undesirable [discriminatory] effect, would also serve the [defendant's] legitimate interest [relating to the challenged practice]." *Id.* (citing *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 425 (1975)). Thus, each court in a disparate impact suit involving insurance would be required to usurp the state insurance

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[15] "Adverse selection" occurs when insurers are unable to charge sufficiently risk-based prices for policyholders with different risk profiles. When an insurer raises premium levels to account for the higher risk policyholders in such a case, those with lower-than-average risks may seek insurance elsewhere, or forego insurance coverage altogether. This leaves only the premiums from higher risk policyholders to cover claims, thereby undermining the risk-spreading purpose of insurance. "The role of insurance underwriters is to minimize adverse selection." ROBERT J. GIBBONS, 1 INSURANCE PERSPECTIVES 69 (1st ed. 1992).

regulators' quasi-legislative role in determining the proper underwriting and rating for whatever form of insurance is at issue. *Cf. Ford v. Schering-Plough Corp.*, 145 F.3d 601, 612 (3d Cir. 1998) ("[W]e will not construe section 501(c) [of the Americans with Disabilities Act] to require a seismic shift in the insurance business, namely requiring insurers to justify their coverage plans in court after a mere allegation by a plaintiff. . . . [R]equiring insurers to justify their coverage plans elevates this court to the position of super-actuary."). Such a result would be an affront to this Court's determination in *Humana* that Congress clearly did *not* intend "a green light for federal regulation whenever the federal law does not collide head on with state regulation." 525 U.S. at 309. The majority below apparently disregarded this Court's caution in that regard. Indeed, in her dissenting opinion, Judge Jones admonished the majority for failing to grasp the basic purposes of the MFA and this Court's holding in *Humana*. She stated:

> The McCarran-Ferguson Act was designed precisely to prevent this type of federal interference with the states' prerogative of insurance regulation. The majority have not only misunderstood the intimate connection between the [Respondents]' claims and insurance rate-making, but they have also interpreted the scope of McCarran-Ferguson preemption too narrowly, and they have misapplied lower court precedents. . . .
>
> Disparate impact claims under the Fair Housing Act are, in my view, squarely

preempted by the McCarran-Ferguson Act and by *Humana*.[16]

Because it is not possible to make any valid inference from "disparate impact" evidence that risk-based underwriting or pricing reflects any consideration of race or another prohibited factor, there is no sound rationale for application of the disparate impact standard to claims of unlawful discrimination in insurance. Not only would use of the standard in this context inappropriately vest the courts with the quasi-legislative task of determining what rates an insurer should charge, *see Nationwide Mut. Ins. Co. v. Williams*, 188 So. 2d 368, 372 (Fla. Dist. Ct. App. 1966) ("Insurance rate-making is a technical, complicated, and involved procedure" and the courts are to give "just credence to the judgment of the Insurance Commissioner who specializes in the field of insurance."), but more importantly, any such injection of judicial authority into the overall fabric of State insurance law regulatory system would demonstrably "impair" State insurance law in contravention of the MFA. *See Humana*, 525 U.S. at 309-10.

III. THE USE OF FACIALLY NEUTRAL CREDIT INFORMATION FOR INSURANCE PURPOSES IS EXPRESSLY AUTHORIZED BY FEDERAL LAW.

The FHA, which never mentions discrimination in insurance at all (and therefore might reasonably be construed not to regulate such discrimination under any theory, *see Mackey v. Nationwide Ins. Co.*, 724 F.2d 419, 423 (4th Cir. 1984)), obviously makes no mention of the use of credit data for insurance purposes. Under the MFA, such FHA silence alone should lead the courts generally to defer to State laws

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[16] 345 F.3d at 301, 303 (Jones, J., dissenting).

and regulations on the matter. However, to the extent any ambiguity as to the intent of Congress remains, it is highly relevant that the use of credit data for insurance purposes is expressly authorized under the federal Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 *et seq.*

The FCRA was enacted to regulate the use of information compiled by credit reporting agencies as a means of "meeting the needs of commerce for consumer credit, personnel, *insurance*, and other information in a manner which is fair and equitable to the consumer." *Id.* at § 1681(b) (emphasis added). Recognizing the value of credit report information for insurance underwriting purposes, Congress included the use of such information "in connection with the underwriting of insurance" as a "permissible purpose" for credit reporting agencies' sharing data with insurers. *Id.* at § 1681b(a)(3)(C). The FCRA also authorizes insurers to take certain "adverse action" based upon credit information, including "an increase in any charge for . . . any insurance," *id.* at § 1681a(k)(1)(B)(i), as long as certain notice requirements are satisfied. *Id.* at § 1681m(a).

As discussed above, since the early 1990s, insurance companies have increasingly found credit information to be a highly accurate predictor of future losses, and thus policyholder risk. Insurers, such as *Amici's* members, rely on actuaries to undertake the complex process of predicting future losses and expenses and allocating those costs among the various classes of policyholders. Actuaries employ statistical analysis and judgment in pricing insurance, using loss and expense data that assist the actuary in estimating the expected costs of insuring a given set of exposures. These exposures can be grouped into various classes according to characteristics that the group members share in common, but only if such a grouping relates to the risk of future loss for its members. To the extent that a classification relates to the risk of loss, that classification is deemed "predictive" of future

loss. It is on the basis of sound risk classification that the premium charged for the transfer of risk is fair and equitable according to the risk of loss each class presents.

Amici's members and other insurers have found credit information a sound basis for the creation of risk-predictive scoring models. Credit-based scoring allows insurance companies to use a variety of objective characteristics from the policyholder's credit history, such as past payment history and length of credit history, to determine coverage risk. The scoring model assigns a numerical score that ranges from risks with the worst expected loss performance to risks with the best expected loss performance. For *Amici's* members and other insurers, these methods of risk assessment are means of achieving compliance with the dictates of both actuarial discipline and State insurance law to underwrite and price insurance based on risk.

The foregoing was known to Congress when, only a few months ago, it enacted the Fair and Accurate Credit Transactions Act of 2003 (the "FACT Act"), Pub. L. No. 108-159, 117 Stat. 1952, which amended the FCRA. The FACT Act, among other things, affirms the legitimacy of credit-based insurance scores under federal law by leaving § 1681b(a)(3)(C) of the FCRA unchanged with respect to the permissible uses of credit data for insurance underwriting. Moreover, Congress included in the FACT Act a new "savings clause" with respect to credit-based insurance scores. Section 212(e) of the FACT Act, which amended FCRA § 1681t, provides that certain provisions of the FCRA and the FACT Act "shall not be construed as limiting, annulling, affecting, or superseding any provision of the laws of any State regulating the use in an insurance activity, or regulating disclosures concerning such use, of a credit-based insurance score of a consumer by any person engaged in the business of insurance." In light of this express recent statement on this issue, it would be a direct affront to Congress to interpret the

silence of the FHA as authorizing federal intervention in the insurance industry in respect of the use of credit data. Congress has not only precluded Respondents' disparate impact claims by its directives on insurance regulation generally in the MFA, but it has also expressly underscored the MFA's directives in this regard, specifically with respect to regulation of insurers' use of credit data, in the current FCRA.[17]

CONCLUSION

For all the foregoing reasons, *Amici* respectfully urge that this Court grant the petition for a writ of certiorari.

Respectfully submitted,

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March 26, 2004

[17] This issue was not addressed by the Fifth Circuit because its opinion was published on September 3, 2003, while the FACT Act was enacted three months later on December 4, 2003.

APPENDIX

APPENDIX

NAIC's Compendium of State Laws on Insurance Topics

USE OF CREDIT REPORTS/SCORING IN UNDERWRITING

11/03

STATE	INDIRECT REGULATION OF CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS	SPECIFIC REFERENCE TO CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS
AL	No provision			Reg. 482-1-127	Personal lines	Make procedures used to obtain credit reports and insurance scores available to commissioner. If use credit scoring, file the scoring model with the commissioner. May not calculate score based on lack of credit history. May not use credit score as sole reason to deny coverage or refuse to renew.
				SB 271 pending (2003) **DIED**	*Property and casualty*	*An insurer may not base an underwriting decision, in whole or in part, on a credit report.*

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STATE	INDIRECT REGULATION OF CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS	SPECIFIC REFERENCE TO CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS
AK	§§ 21.36.120, 21.36.150, 21.39.030	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	SB 13 (2003) (Eff. 1/1/04) (Codified as §§ 21.36.460, 21.39.035)	Personal lines	If use credit information in underwriting or rating, disclose that fact at the time the application is taken. Must consider in combination with other factors. May not consider absence of credit history or medical accounts. File credit scoring model with commissioner.
				HB 85, SB 64 pending (2003) (Carry over to 2004)	*Consumer reporting agencies*	*Consumer reporting agency shall provide complete file to consumer on request without charge.*

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STATE	INDIRECT REGULATION OF CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS	SPECIFIC REFERENCE TO CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS
AZ	§ 20-448	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 44-1692 § § 20-2102, 20-2109 to 20-2110 *HB 2183 pending (2003)* **DIED**	Alt lines Property and casualty *Property and casualty*	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting. Must provide specific reasons for adverse decision based on credit history or credit score. *May not use credit history to determine rates or eligibility for coverage unless models to calculate are filed with the commissioner. May not consider absence of credit or medical industry codes.*

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				HB 2032 (2003) (Eff. 8/31/04) (Codified as § 20-2110)	All lines	In the event of an adverse underwriting decision, provide the specific reasons. If based on credit-related information, must decide factors that were primary cause. May not use the following credit-related factors for property or casualty premiums: absence of credit history, credit history based on collection of medical bills, total available credit, etc.
				SB 1265 (2003) (Eff. 12/31/03) (Codified as § 20-1652	Property and casualty	Must get credit information promptly; cannot cancel or decline coverage more than 30 days after date of application based on credit report.

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AR	§ 23-66-205, 23-66-206	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 23-66-317 (Repealed eff. 1/1/04)	Personal lines	Auto insurer may not refuse to issue or renew coverage or limit coverage solely upon the applicant's credit history unless the credit report reveals an increased hazard and the insurer or its agent sends written notice to the applicant explaining the insurer's actions.
				Directive 2-2002	Personal lines property and casualty	May not refuse to issue or renew coverage based solely on credit report unless report shows substantially increased risk to insurer and insured is given notice. If insurer relies on credit scoring, system must be filed with department.

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STATE	INDIRECT REGULATION OF CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS	SPECIFIC REFERENCE TO CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS
				SB 846 (2003) (Eff. 1/1/04) (Codified as §§ 23-67-401 to 23-67-415)	Personal lines P/C	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)

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CÃ	Ins. § 790.93	Life	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Civ. §§ 1785.10 to 1785.11	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting. Agency must notify consumer of rights and provide copy of file, including any credit score used.
				AB 800 pending (2003) (Passed Senate, held in Assembly)	*Consumer reporting agencies*	*Amends Civ. § 1785.25 to state that the credit reporting agency may only furnish information (if it reasonably knows the information is accurate and complete.*

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	Reg. tit. 10 § 2632.5	Private auto	Credit scores are not listed as an allowable auto rating factor.	Civ. § 1786.18	All lines	May not include specified information in an investigative report except when used in underwriting life insurance expected to amount to $250,000 or more.
				Bulletin 76-3	All lines	Users of credit reports who deny insurance or increase the prices charged on the basis of information contained in the reports must disclose the information that was the basis for the adverse decision.
				SB 64 pending (2003) (Passed Senate, Held in Assembly)	*Home owners*	*An insurer may not use credit ratings, credit reports or other credit information to underwrite or rate policies.*

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STATE	INDIRECT REGULATION OF CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS	SPECIFIC REFERENCE TO CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS
				AB 3 pending (2003)		*Consumer credit reporting agency must remove derogatory information more than 7 years old. Credit score may not be affected by number of inquiries. Provide one free copy of report to consumers yearly.*
				SB 691 pending (2003) (Passed Senate)	*Homeowners*	*May not use credit history to underwrite a risk.*

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CO	§ 10-3-1 104	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 22-14.3-103	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting. Must notify consumers that will be using credit report for determination of eligibility for coverage or to determine premiums.
				§ 12-14.3-105.3	Life	May use credit report in underwriting life insurance expected to amount to $100,000 or more.

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				Reg. 5-1-16	Personal auto, homeowners, non-commercial fire, mobile home owners	Safeguards and standards for proper use of credit information. May not use credit information as sole basis for underwriting or refusing to renew. Insurer must written guidelines that are consistently applied. Must provide notice to consumers advising them that credit information will be used for underwriting/rating.
				HB 03-1273 (2003) (Eff. 7/1/04) (Codified as § 10-4-616)	Auto	Disclose to a consumer that a credit score will be considered, the range of scores, and how the score is calculated.

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CT	§ 38a-816, 38a-818	Disability specifically addressed; commissioner may pursue undefined unfair practices.	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Guidelines for the Examination of Financial History Measurement Programs for Personal Risk Insurance Underwriting and Rating Plans.	All lines	File measurement tools with the department. May only be used for new business. May not consider lack of credit history. Demonstrate coordination with expected risk of loss. Disclosure to customer.
				AB 5490 pending (2003) **DIED**	*All lines*	*May not use credit history for underwriting or setting rates.*

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STATE	INDIRECT REGULATION OF CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS	SPECIFIC REFERENCE TO CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS
DE	tit. 18 § 2304	Life, health	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Reg. tit. 18 § 906	Personal lines	May not use credit report or score unless the company has obtained authority to do so in its rate filing. File supporting information showing it is actuarially supported and is not the sole basis for denying coverage or assigning the consumer to a premium class. May not assign a higher rate because the consumer has no credit history. May not use obsolete history. Provide notice to consumers of use of credit history. Models filed with the commissioner shall be considered as confidential proprietary information.
DC	no provision			No provision		

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STATE	INDIRECT REGULATION OF CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS	SPECIFIC REFERENCE TO CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS
FL	§ 626.9541	Life, health	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Reg. 4-125.004	All lines	An insurer shall notify an insurance applicant in writing, or in the same medium as the application, that a credit report will or may be requested as part of the application process. If the application is denied, the insurer must tell the applicant in the notice of the denial how a copy of the credit report can be obtained so the applicant can identify the items that resulted in the denial.

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STATE	INDIRECT REGULATION OF CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS	SPECIFIC REFERENCE TO CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS
FL (cont'd)				SB 40-A (Codified as § 626.9741) (Eff. 1/1/04)	Personal lines auto and homeowners	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)
				SB 42-A (Codified as § 627.9742) (Eff. 1/1/04)	Open records law	Credit scoring methodologies are trade secrets and confidential and exempt from public record requirements.

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STATE	INDIRECT REGULATION OF CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS	SPECIFIC REFERENCE TO CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS
FL (cont'd)				*HB 233 pending (2003)* **DIED**	*Personal lines*	*May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department.* (NCOIL model)

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FL (cont'd)				*SB 204 pending (2003)* **GOVERNOR VETOED**	*Auto and homeowners*	*Notify consumers that the credit report will be considered; may not use as sole criteria for adverse underwriting decision. May not consider absence of credit history or problems resulting from medical bills, must provide information to insurance department showing credit history is a reasonable predictor of insurance risk. Must review score after 2 years or earlier if requested by consumer. Implementation contingent on passage of HR 1895, which provides a public records exception for credit scoring methodology.*

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STATE	INDIRECT REGULATION OF CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS	SPECIFIC REFERENCE TO CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS
GA	§ 33-6-4	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Reg. 120-2-15	Private passenger auto, residential property	Insurer may cancel, nonrenew or decline a policy based on an individual's credit report. Insurer shall file this information quarterly with the commissioner. Insurer shall provide notice and the specific reason for the decision to the insured.
				Reg. 120-2-65	Private passenger auto	An insurer shall not use underwriting criteria or guidelines that result in the fictitious grouping of risks and results in unfair discrimination. The use of credit reports in determining an applicant's or insured's acceptability for coverage may create fictitious grouping and unfair discrimination.

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				HB 215 (2003) (Codified as §§ 33-24-90 to 33-24-98)	Personal lines P/C	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)

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HI	§ 431:13-103	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 431:10C-207	Auto	Insurer shall not base standard or rating plan upon a person's credit bureau rating.
ID	§ 41-1313	Life, disability	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Bulletin 91-9	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting.

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				§ 41-1843	Property or casualty	May not charge a higher rate or cancel coverage based primarily on a credit rating or credit history.
				Ins. Reg. 19	Personal lines property or casualty	Aggregate weight given to noncredit factors must be at least as great as the aggregate weight given to credit factors. Items identified as trade secrets are not subject to public disclosure. Insurers must retain documentation for 5 years.
IL	No provision			215 ILCS 5/155.38	Personal lines	May not refuse to issue or renew a policy solely on the basis of a credit report. Provide policyholder with notice.
				HB 502, SB 92 pending (2003)	*Homeowners and renters insurance*	*May not consider credit score.*

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				HB 1640 (2003) (Eff. 10/1/03)	Personal lines P/C	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)
				HB 3661 (2003)		Amends HB 1640 to require a certification that the treatment is actuarially justified.
				HB 2378 pending (2003)	*Credit reporting agencies*	*Establishes the duties of credit reporting agencies.*

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				SB 818 pending (2003)	*Personal lines P/C*	*May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. Methodology considered a trade secret under IL law. May not sell any data or lists regarding credit inquiries or credit reports. (Based on NCOIL model)*

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IN	§ 27-4-1-4	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 25-1-22-25	Personal auto	May not charge higher rate because policyholder has filed bankruptcy petition.

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				Bulletin 111 (July 1, 2002)	Personal lines property and casualty	Submit to insurance department information on how credit information is utilized in underwriting, including the factors from a credit report that are included in a credit score, the computer model used to determine a credit score, any underwriting guidelines related to the use of credit scores and documentation to demonstrate the correlation between credit information and expected risk of loss. May not use credit scores after 10/1x/02 unless the information is filed with the department.

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				SB 178 (2003)	Personal lines property and casualty	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)
				HB 1634, HB 1187 pending (2003) **DIED**	*Personal lines property and casualty*	*May not use credit score to underwrite or rate a policy.*

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IA	§ 507B.4	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Reg. § 191-20.12	Auto and homeowners	May not underwrite or cancel based solely on credit report or scores. Commissioner may request copy of factors used in decision and the model used in credit scoring.
KS	§ 40-2404	Life, health	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Concurrent Resolution 1623 (2002)		Study the issue and report to 2003 legislature.

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	§ 40-2, 112	All lines	Insurer submitting an adverse underwriting decision shall either provide, in writing, the applicant, policyholder or individual with the specific reason for the decision or advise the person that they may receive the reason in writing.	HB 2071 (2003) (Eff. for policies issued 1/1/04 and later) (Codified as §§ 40-5101 to 40-5114)	Personal lines P/C	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)
	§ 40-953	Property and casualty	Rates shall not be unfairly discriminatory. Differences in rates must reflect the differences in risk with reasonable accuracy.			

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KY	§ 304.12-080	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 304.20-040	Auto	May not refuse to issue or renew a policy solely because of credit history, or lack of credit history of the applicant.
	Dept. policy	All lines	Underwriting guidelines must be in written form and filed with the Dept. of Insurance. The guidelines must be used uniformly.			

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LA	§ 22:1214	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 22:1214(7)(i)	Auto liability	Prohibits an insurer from terminating, refusing to renew or refusing to issue insurance because the insured has declared bankruptcy.
				HB 53, HB 58, HB 118, SB 206 pending (2003) **DIED**	*Auto and homeowners*	*Use of credit reports and credit scores is an unfair trade practice.*

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				HB 1448 (2003) (Codified as §§ 22:1481 to 22:1494)	Personal lines P/C	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)
				HB 1107 pending (2003) **DIED**	*Auto and homeowners*	*May not use credit score in underwriting homeowner's insurance. May use for auto only to rate a new policy. Limits on the considerations that may be included.*

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ME	tit. 24 § 2159	Life, health	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	tit. 10 § 1313-A	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting.
				tit. 24-A § 2917	All lines	Insurer must notify policyholder of reason intend to nonrenew, such as "credit report."
				LD 470 (2003) (Codified as tit. 24-A § 2169-B)	Personal lines auto and property and casualty	May not use an insurance score calculated using income, gender, ZIP code, religion, etc. or raise rates based solely on credit score. Provide notice to consumer.

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				LD 556 (2003) (Codified as tit. 10 § 1315)	Credit reporting agencies	Disclose procedures to consumers to correct inaccurate credit reports.
MD	Ins. § 27-208	Life, health	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Ins. § 27-501	Private auto	May not refuse to underwrite based solely on credit history.

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				Commercial § 14-1202	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting. Insurers that use credit reports or credit scores must provide the commissioner with underlying information so the commissioner can ensure that reports are used in accordance with the law. Must notify consumers of actual reason for an adverse action.

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				Reg. 31.15.11	Personal lines property and casualty	May not use credit history to rate or refuse to underwrite homeowners coverage. May not use credit history to refuse to renew an auto policy or increase its premium. May use credit history to rate a new auto policy. Advise applicant that credit history is being used. May not consider the absence of a credit history as a factor.
				Ins. § 27-501	Personal lines property and casualty	*Would amend § 27-501 by deleting the provision that allows credit history to raise the premium for auto.*

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				SB 444 pending (2003) **DIED**		*Would amend § 27-501 by requiring permission of the applicant to use credit history.*
				SB 174 pending (2003) **DIED**		
				Ins. § 11-317	Private auto	Must provide a policyholder statement on rating factors. If use credit scoring, explain how it may cause an increase in premiums.
				Bulletin 02-14, 02-16	Personal lines property and casualty	Address questions in implementation.

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MA	ch. 176D	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory. Department does not allow credit scoring, based on Unfair Trade Practices Act.	§ 93:51	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting.
				§ 93:62	Insurance for personal, family or household purposes	If coverage is denied or price increased because of credit report, must notify consumer of right to receive a credit report.

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				Regulation pending (2003) **WITHDRAWN**	*Personal lines property and casualty*	
MI	§§ 500.2019, 500.2020, 500.2027	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Bulletin 2003-01-INS	Personal lines	File formula used to compute credit score with the department. Must recalculate credit score at least yearly.
				Bulletin 2003-02-INS	Personal lines	Revises 2003-01-INS to require rescoring only at the request of the policyholder. Notify consumers of their score and the discount tier they are in.

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	§ 500.2110a	All lines	If uniformly applied to all its insureds, an insurer may establish a premium discount plan. Insurers utilize this provision to justify using credit scores.	*HB 4268, SB 191 pending (2003)*	*Auto and homeowners*	*May not rate based on credit history or lack thereof.*
				SB 473 pending (2003)	*Auto and health care*	*Premium discount plan shall not be based in whole or in part upon an applicant's or insured's lack of credit history.*

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MN	§ 72A.20	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 72A.20 subd. 36	Private passenger auto and homeowners	May not reject, cancel or nonrenew a policy solely on the basis of credit information. If will use credit information, must notify consumer. If use a credit scoring system, must have methodology on file with the commissioner.
				HF 76 pending (2003)	*Auto and homeowners*	*Prohibits use of credit information.*
				HF 946 (2003) (Codified as § 72a.501 subdivision 2)	Property and casualty	Code sections limiting collection of information do not apply to credit scoring, as long as the agent informs the policyholder.

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MS	§§ 83-5-35, 83-5-45	Life, health specifically mentioned; commissioner may pursue undefined unfair practices.	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Reg. 2003-1	Personal lines	Insurer must make available to the department on request the insurer's specific written procedures detailing its practices regarding credit history and credit scores. If depends on credit scores, file model with commissioner prior to use. May not base on lack of credit history or use as only factor in decision to cancel or non-renew notice requirements.

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MO	§ 375.936	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Reg. tit. 20 § 500-9. 100	Homeowner	Insurer must inform the Dept. of Insurance that it is using credit history as an underwriting guideline.
				§ 375.918	Personal lines property and casualty	May not use credit report or credit score as the sole rating factor. Must disclose the fact that will gather credit information. Must inform applicant if credit score or report adversely affected him.

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				HB 259 pending (2003) **DIED**	*Auto or personal property*	*Would amend § 375.918 to broaden its provisions from underwriting to "any other insurance purpose."*
				SB 670 pending (2003) **DIED**	*Credit reporting agencies*	*May not determine credit risk in whole or in part by the number of inquiries posted.*
MT	§§ 33-12-206, 33-18-210	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 31-3-111	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting.

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				§ 33-18-210	Auto, homeowners	An insurer may not refuse to insure or refuse to renew, charge higher rates or limit the scope of coverage based on credit history unless related to the risk of the insured.
				SB 349 pending (2003) **DIED**	Personal lines	*May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department.* (NCOIL model)

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				HB 184 pending (2003) **DIED**	*Personal lines*	*May not cancel or refuse to renew existing coverage based on credit score. May not use score as sole basis to deny coverage. File credit scoring methodology with commissioner. Provide consumer notice if take adverse action based on credit information*
				HB 332 pending (2003) **DIED**	*Auto and homeowners*	*May not use credit score as a rating factor.*
NE	§ 44-5019	Property, casualty	Rating systems shall not produce premiums that are excessive, inadequate or unfairly discriminatory.	§ 44-7516.01	*Private passenger auto*	Policy must be accompanied by disclosure stating if any credit-based rating was used to determine rate charged for coverage.

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	§ 44-1525	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	LB 487 (2003)	Personal lines	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)
				LB 693 pending (2003) **DIED**	*Homeowners, renters, auto*	*It is an unfair trade practice to use credit scores.*

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NV	§§ 686A.100, 686A.170	Life, health specifically mentioned; commissioner may pursue undefined unfair practices.	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	SB 319 (2003)	Personal lines	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. (NCOIL model)
				AB 194 pending (2003) **DIED**	*All lines except surety*	*May not use credit reports in underwriting insurance.*

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NH	§ 417:4	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 359-B:4	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting.
				§ 359-B:5	Life	May use credit report in underwriting life insurance expected to amount to $50,000 or more.

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				§ 412:14-a	Auto	Use of credit reports, credit histories and credit scoring for underwriting purposes shall be based upon objective and measurable standards with appropriate consumer protections.
				HB 557 pending (2003) **DIED**		*Would revise § 412:14-a by forbidding the use of credit history.*
				§ 414:3	Fire, certain casualty	Use of credit reports, credit histories and credit scoring for underwriting purposes shall be based upon objective and measurable standards with appropriate consumer protections.

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				Reg. Ins. 1401.08	Auto	Unsubstantiated information developed by credit or character investigations shall not be relied on in making decisions on whether to write or renew coverage.
				Reg. Ins. 3301.01 to 3310.02	Auto and homeowners	If use credit scoring, must establish written standards to prevent discrimination and submit scoring model to the insurance department for review.

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NJ	§§ 17:29B-4, 17:29B-9	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 56:11-31	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting.
				Department Policy (See website for informational booklet)	Auto	The department does not approve filings that include a credit scoring component.

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NM	§§ 59A-16-11, 59A-16-17	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Bulletin 2002-001	All lines	All insurers that use credit scoring in underwriting or rate making must submit all portions of the programs that include the use of credit scoring.
				SB 325, HB 598 pending (2003) **DIED**	*Auto*	*May not use credit history to raise the premium for a new or existing policy or to cancel an existing policy.*
NY	Ins. Law §§ 2301 to 2302	All lines	Rates shall not be excessive or discriminatory.	General Business *§ 380-i*	All lines	Requires users of consumer reports to advise the consumer of adverse action taken in reliance on the report.

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				OGC Opinion No. 96-1	Homeowners	Must give specific reasons for cancellation.
				AB 2661 pending (2003)	*Homeowners*	*May not use credit history information to decide whether to issue or renew a policy.*
				AB 4730 pending (2003)	*All lines*	*It is an unfair trade practice to consider credit information in setting premiums.*
				AB 4754 (Passed Assembly), SB 2728 pending (2003)	*All lines*	*May not use credit history in underwriting.*
				AB 6281, SB 3186 pending (2003)	*Auto*	*May not use credit history in deciding whether to issue or renew coverage. May not request a credit report.*

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				AB 7419 pending (2003	*Consumer reporting agencies*	*Consumer may request a consumer reporting agency not to release any information about him.*
				SB 356 pending (2003)	*Consumer reporting agencies*	*Most data can only be disclosed for 3 years instead of the current 7 years.*
NC	§ 58-63-15	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	*HB 596 pending (2003)* **DIED**	*Private passenger auto*	May not base rates on credit reports.

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				SB 771 (2003) (Eff. 1/1/04) (Codified as § 58-36-90)	Private passenger auto	May not use credit reports as sole rating factor. Must notify consumer if will be used. File scoring models with insurance department.
ND	§ 26.1-04-03	Life, health	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	*HB 1290 pending (2003)* **DIED**	*Property and casualty*	*May not use credit scoring as the sole basis to decline or refuse to renew a policy or to increase or decrease a premium more than 15%. If use credit report, provide free copy to insured.*

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				HB 1260 (2003) (Codified as §§ 26.1-25.1-01 to 26.1-25.1-11)	Personal lines	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)

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OH	§ 3901.21	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Bulletin 26	*Auto substandard risks*	If a substandard risk classification relies on a credit report, that report should be attached to the dailies of the policies issued. The Ohio Dept. will periodically inspect.
				Bulletin 2002-2	*Property and casualty*	Insurers must establish that credit history and credit scores are valid risk characteristics. May not use for discriminatory purposes.
				SB 48 pending (2003)	*Homeowners*	*Using a credit score in connection with homeowner's insurance is an unfair trade practice.*

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				Reg. 3901-1-55	Personal lines	Prohibits insurers from using credit information as the sole basis for underwriting and rating decisions. Disclosure to consumers required.
OK	tit. 36 § 1204	All lines	There shall not be discrimination in favor of particular persons having substantially like insuring risk and exposure factors or expense elements in the terms or conditions of any insurance contract or in the rate or amount of premium charged.	Guidelines adopted by Oklahoma State Board for Property and casualty Rates 9/27/01	*Property and casualty insurance*	Insurers that use credit history or credit scores must provide the board with underlying information to show they are using the information in accordance with OK law. Notify the insured of any adverse action taken as a result of the credit history or credit score.

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				SB 539 (2003) (Codified as tit. 36 §§ 950 to 959)	Personal lines	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)
				HB 1659 pending (2003) (Carries over to 2004)	*Property and casualty*	*May not use credit history.*
				SB 684 pending (2003) (Carries over to 2004)	*Credit, homeowners, life, auto*	*May not use insurance score that includes the address or ZIP code as a factor.*

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				HB 1629 pending (2003) (Carries over to 2004)	*Auto*	*May not use credit history.*
OR	§ 746.015	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 746.635	All lines	Insurer, agent or insurance support organization may not prepare or request an investigative consumer report about a person involving an insurance transaction unless the insurer or agent informs the person that he may request to be interviewed in connection with the preparation of the report and that the person may request a copy of the report.

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				Reg. §§ 836-080-0425 to 836-080-0440	Personal lines P/C	Must disclose to consumer that credit history will be used. Notice if adverse action based on credit score; explain how to dispute finding.

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				SB 260 (2003) (Eff. 1/1/04)	Personal lines	If adverse underwriting decision, provide consumer with specific reasons. If based on credit score, include specifics of at least 4 reasons for score. Provide information on how to dispute. May use credit history only in combination with other factors to decline coverage. May not consider absence of history, number of inquiries, total available credit, etc. Consumer may request yearly re-rating. File scoring models with dept.

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				SB 280, SB 484 pending (2003) **DIED**	*Personal lines*	*May not use credit history to cancel or nonrenewal personal insurance. May use to decline coverage only in combination with other factors.Iıncludes a list of factors insurers may not consider.*
PA	§ 40-29-105	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	*SB 198 pending (2003)*	*Personal lines*	*May not use credit history to deny, cancel or refuse to renew coverage. May adjust rates based on credit history in combination with other factors. Authority to adopt regulations.*
				SB 331 pending (2003)	*Personal lines P/C*	May not use credit scoring to underwrite coverage.

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				SB 336 pending (2003)	*Auto*	May not use credit scoring.
				SB 337 pending (2003)	*All lines*	May not use credit score in underwriting.
RI	§ 27-29-4	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 6-13.1-21	All lines	May not request a credit report without first notifying the insurance applicant. If deny coverage or charge more, must notify consumers that is due to credit report.

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				§§ 27-6-53, 27-9-56	Homeowners and personal auto	May use credit scoring for rating and underwriting only if the insurer demonstrates the predictive nature of the score to the insurance department. If requested by customer, must do new credit score every 2 years and lower rates if score is better. May not use revised score to raise rates except as noted.
				SB 137, HB 5362 (2003) (Eff. 1/4/04)	Homeowners and auto	Amends above statute to state that rates may only be changed at time of renewal. List of factors that may not be considered. Reporting agency may not sell data or lists that include information about credit report.

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				HB 5709 pending (2003) Bulletin 2002-16	*All lines*	*May not request credit report in connection with a consumer's application for insurance.* Explains 2002 law.
SC	§ 38-57-120	Life, health	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 38-73-740	Auto	Credit report used as basis for rate classification must be kept on file by the insurer for 3 years, and be available to the applicant.

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				Bulletin 2002-04	Private passenger auto	May not refuse to insure, cancel or non- renew based solely on credit history or credit score. A filing including credit scoring must include justification. Disclose to consumer that insurer may gather and consider credit information.
				SB 49 pending (2003) (Carries over to 2004)	All lines	*May not consider credit reports or credit rating.*

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SD	§§ 58-33-12, 58-33-13, 58-33-38	Life, health specifically mentioned; commissioner may pursue undefined unfair practices.	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Bulletin 2002-3	Personal lines property and casualty	May not use credit information as the sole rating factor.
TN	§ 56-8-104	Life, health, fire	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Department Policy	All lines	Justification for use of credit scoring must be provided in the filing. Credit scoring cannot be the sole basis for determining rates.

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				SB 122, HB 284 pending (2003) (Carries over to 2004)	*Homeowners*	*May not base rates on credit information.*
				HB 711, SB 638 pending (2003) (Carries over to 2004)	*All lines*	*May not charge higher rate based primarily on credit score.*
				HB 22, SB 1616 pending (2003) (Carries over to 2004)	*Personal lines*	*May not charge higher rate based primarily on credit score.*
				HB 1445, SB 1713 pending (2003) (Carries over to 2004)	*Credit reporting agencies*	*Must give a free copy of credit report to consumer yearly under certain circumstances.*

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TX	I.C. art. 21-21	Life	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory	Business and Commerce § 20.02	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting.
				Business and Commerce § 20.05	Life	May use credit report in underwriting life insurance expected to have a value of $150,000 or more.
				SB 310 (2003)	Residential property	File information on credit scoring along with other rating information. Information is confidential.

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				HB 45, HB 81, HB 870, HB 115, HB 331, HB 600, HB 800, SB 91, SB 99, SB 400, HB 696 pending (2003) **DIED**	*Auto, homeowners, farm/ranch*	*May not use credit score.*
				SB 14 (2003) (Codified as art. 21.49-2U)	Auto, homeowners, personal watercraft and recreational vehicles	May not base decision wholly on credit report. May not consider absence of credit history. May not use listed negative factors. Disclose to applicants; notice of adverse decision. Credit scoring model is public information.

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				Reg. 28 TAC § 5.9940 to 5.9941	Personal lines	Disclosure statement for consumers on how score is calculated, right to appeal, requirement for actuarial justification.
				HB 265, SB 130 pending (2003) **DIED**	*Auto, homeowners, farm/ranch residential fire*	*If use credit reports, must provide disclosures to customers. May not use credit information as sole rating factor; may not consider medical information. May not consider absence of credit history.*
				HB 259 pending (2003) **DIED**	*Auto, homeowners, farm/ranch residential fire*	*File credit scoring model with dept. for approval prior to use. Filing becomes public information.*

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				HB 920 pending (2003) **DIED**	*Auto, homeowners, farm/ranch, non-commercial watercraft*	*May not deny or cancel based solely on credit report. May not consider medical information. May not consider absence of credit history.* (some of NCOIL model)
				HB 2467 pending (2003) **DIED**	*Auto, homeowners, farm/ranch, non-commercial watercraft, snowmobile, RVs*	*May not use credit history to unfairly discriminate; list of factors may not consider. Disclosures required*
				SB 400 pending (2003) **DIED**	*Auto, homeowners*	*May not use underwriting guideline based in whole or in part on credit score.*

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UT	No provision			§ 31A-22-1307	Homeowners liability	Insurer that uses credit reports in underwriting must comply with federal Consumer Credit Reporting Act.
				§ 31A-22-320	Auto	May only use credit information to reduce rates or in conjunction with other factors.
				Reg. R590-219-1 to 590-219-8	Private passenger auto	Inform consumer of factors used in adverse underwriting decision. May not use credit information to cancel or nonrenew coverage that has been in place 60 days or more or as the primary reason to refuse to issue a new policy.

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VT	tit. 8 § 4724	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	*HB 186 pending (2003) (Carries over to 2004)*	*Personal lines*	*May not take an adverse action based on information in a credit report unless can demonstrate the criterion increases the risk of loss. Disclosure rules.*
				SB 77 pending (2003) (Carries over to 2004)	*Credit reporting agencies*	*Must explain credit scores and key factors that make up the score.*

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VA	§ 38.2-508	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§§ 38.2-2114, 38.2-2212	Auto, fire	Insurers shall not refuse to renew an insurance policy solely based on credit information contained in a consumer report, bearing on an individual's creditworthiness, credit standing or credit capacity unless the insurer includes a statement informing the insured of the reasons for nonrenewal.
				Administrative Letter 2002-6	All lines	Any insurer intending to use credit score must file the model prior to their use.

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				SB 1284 (2003) (Codified as §§ 38.2-2126 and 38.2-2234)	Homeowners, renters, auto	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. *(NCOIL* model)
WA	No provision			§ 19.182.020	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting.

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				§ 19.182.040	Life	May use credit report in underwriting life insurance expected to amount to $50,000 or more.
				§ 48.18.545	All lines of personal insurance	Credit history may not be used to cancel or nonrenew insurance. May only be used to deny coverage if combined with other substantive underwriting factors.
				§ 48.19.035	All lines of personal insurance	Credit history shall not be used to determine insurance rates unless the credit scoring models are filed with the commissioner. May not use certain attributes of credit history in credit scoring model.

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				Reg. 284-24A-001 to 284-24A-065	All lines of personal insurance	Regulation describes standards that apply to insurers that use credit history.
WV	§ 33-11-4	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 91-8-3	Auto	Dept. of Motor Vehicles may furnish credit information from its files where an insurer intends to use it for underwriting.

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				Informational Letter No. 142 (July 2002)	Personal auto, homeowners, accident and sickness	Guidelines for filings containing credit scoring. Data may not be used in unfairly discriminatory manner. May not be sole basis for deciding whether to write coverage. If used for rating, must recheck scores of policyholders yearly.
				§33-6B-3	Auto	May not decline a policy based on adverse credit report.
				§ 33-17A-6	Property	May not decline a policy based on adverse credit report.
				SB 376 pending (2003) **DIED**	*All lines*	*Insurers must provide free consultation on how to improve a credit score.*

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WI	§ 628.34, Reg. § INS 6.67, 6.68	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Bulletin dated 6/16/97	Personal auto and homeowners	Can use credit reports but not as the sole reason to refuse, cancel or nonrenew a policy.
				AB 102, SB 39 pending (2003)	*Credit reporting agencies*	*Provide written disclosure to consumers as listed.*
				AB 278 pending (2003)	*Renters and homeowners*	*May not use information in a credit report as a rating factor.*

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WY	§§ 26-13-109, 26-13-112, 26-13-116	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	SF 81 (2003) (Codified as § 26-2-134)	Personal lines, auto, homeowners	Authority to adopt regulation to provide that credit history may not be sole factor and to require disclosures. Protect consumers against unfair discrimination.

This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Every effort has been made to provide correct and accurate summaries to assist the reader in targeting useful information. For further details, the statutes and regulations cited should be consulted.

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